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Supreme Court of the United States

October Term, 1936.

No. 659

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Alfred Bettman,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETITION

The Cincinnati Soap Company, a corporation, prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Sixth Circuit requiring that the cause in said Court in which the petitioner is the appellant and the respondent, The United States of America, is the appellee, being case No. 7607 in said Court, and which cause is an appeal from a judgment of the United States District Court for the Southern District of Ohio, Western Division, entered January 5, 1937, sustaining a demurrer of the respondent to the petition of the petitioner as amended and rendering judgment for the respondent, be certified to this Court for determination by this Court.

A.

Summary Statement of the Matter Involved.

The sole question in this case is the constitutionality of those provisions of Section 602½ of the Revenue Act of 1934 relating to the processing tax on Philippine coconut oil. The action was brought for a refund of $995.85 paid on February 27th, 1935 on the use by the petitioner of Philippine coconut oil in the manufacture of soap. The Government demurred to the petition, thus eliminating issues of fact. The District Court sustained the demurrer on the ground that said provisions are valid and constitutional, and petitioner not asking to plead further, the Court rendered judgment for the defendant, that is, The United States of America, respondent herein. Petitioner appealed to the United States Circuit Court of Appeals for the Sixth Circuit, and said appeal is now pending in that Court.

The said provisions of Section 602½ of the Revenue Act of 1934 are as follows:

Section 602½—

> "(a) There is hereby imposed upon the first domestic processing of coconut oil * * * a tax of 3 cents per pound, to be paid by the processor. * * * All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purpose of this section the term 'first domestic processing' means the

first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate."

• • • •

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(Section 602½ is set out in full in the Appendix, infra pages 45-48 incl.)

No provisions of the Revenue Act of 1934, excepting the above, are involved.

The facts and allegations of the petition may be summarized as follows:

The petitioner, The Cincinnati Soap Company, is a corporation engaged in the manufacture of soap, with office in Cincinnati, Ohio and manufacturing plant at Dayton, Ohio; so that its maufacturing or processing was exclusively within Ohio and intrastate. Philippine coconut oil was an ingredient of a large proportion of its soaps, for which there was no substitute. Philippine coconut oil is used by many soap manufacturers in the United States as well as by some other processors. The oil is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers,

the dealers place the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other users, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. All this was true of the oil on the use of which plaintiff paid the sum for the refund of which this case was brought. Philippine coconut oil imported into the United States is not all domestically processed, that is, some of it is marketed and used in the United States without any processing which would subject it to the tax provided in Section 602½ of the Revenue Act of 1934.

Petitioner was unable to recover the amounts imposed upon it by said Section 602½ by increasing the prices at which it sold its soaps; for the competitive conditions of the soap market were such that if petitioner undertook to increase the prices of its soaps to the extent represented by the processing tax, it would have been unable to sell its soaps. The 3 cents per pound imposed by the statute increased the price of coconut oil by 100% and constituted about 30% of the total manufacturing cost of petitioner's soaps, and the effect of this processing tax was such as to make it impossible for petitioner to continue to conduct its business at a profit, although up to the time of the imposition of this processing tax, petitioner had been able to conduct its business at a substantial profit.

As introduced in Congress and reported out by the Ways and Means Committee of the House, the Revenue Bill of 1934 provided for a processing tax on a number of different kinds of oil, including coconut oil but without containing any of the special provisions regarding Philippine coconut oil as above quoted. Coconut oil used in the

United States in soap manufacturing and other processings came predominantly, but not exclusively, from the Philippine Islands. The oil processing taxes were placed in the bill at the behest of domestic producers of other vegetable and animal fats and oils, such as lard, tallow, butter, soybean oil, cotton-seed oil and others, for the purpose of increasing the production or prices of these domestic oils and fats.

At the time the revenue bill was introduced and reported, that is, before any of these special Philippine coconut oil provisions were inserted, Congress passed the Philippine Independence Act and this was accepted by the Philippine legislature. This Independence Act exempted from import duties coconut oil imported from the Philippines up to approximately the then amount of the annual importations.

Thereupon, the President of the United States called to the attention of Congress that the coconut oil provisions of the pending revenue bill would violate the agreement made with the Philippine Islands in the Independence Act and the acceptance of that Act by the Philippine legislature, and asked for the elimination of coconut oil from the bill. Out of the debates and actions which followed there ensued the insertion into the bill before its enactment of the aforesaid special provisions regarding Philippine coconut oil, which provisions provide that the proceeds of the imposition upon the processing of Philippine coconut oil shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid to the Treasury of the Philippine Islands, and that if at any time the Philippine Government provides for any subsidy to the producers of copra, coconut oil or allied products, no further payments to the Philippine Treasury shall be made. (Copra is the meat of coconuts from which the coconut oil is extracted.)

Pursuant to the Philippine Independence Act, the Philippine Constitutional Convention was called, and on February 8, 1935 adopted a Constitution of the Philippines, which on March 23, 1935 was approved by the President of the United States and on May 14, 1935 was approved and adopted by the people of the Philippines, and the new government of the Commonwealth of the Philippines was inaugurated on November 15, 1935.

The petitioner contends that said provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of the tax upon the first domestic processing thereof, are unconstitutional. This contention is based upon several grounds stated in the petition (R. 7-10 incl.). These grounds are summarized towards the beginning of the brief attached to this petition, and may be stated in a general way to be:— the tax is imposed and collected solely for payment into the treasury of the Philippine Commonwealth, and not one penny of it is collected for United States revenue or for the Treasury of the United States or the financing of any activity of the United States or the support of the Government of the United States. The entire proceeds are placed at the exclusive disposal of the Government of the Philippine Commonwealth without any direction or control by the United States over its use. Absolutely none of the activities of the United States in the exercise of its powers or responsibilities in or in relation of the Philippine Islands is intended to be or authorized to be financed from the collections of this tax: and the financing of the exercise by the United States of the powers and responsibilities which, in the Philippine Independence Act, it has reserved in and over the Philippines is appropriated from funds in the Treasury of the United States, and this Philippine coconut oil processing

tax fund is not available for and may not be touched for these or any other activities of the United States. Consequently, the Philippine coconut oil provisions of the Revenue Act of 1934 do not fall within the scope of the taxing powers of Congress granted in Section 8 of Article I of the Constitution, as they are for a "local" (namely, the Philippine Islands) and not a "general" welfare, and, the Philippine Islands not being a part of the United States, are not for the welfare "of the United States" within the meaning of the revenue clauses of the Constitution. For these reasons, and being a high and burdensome tax upon one group within the United States, namely the soap manufacturers and other processors of Philippine coconut oil, these provisions also violate the Fifth Amendment. Furthermore, these provisions represent and were part of a plan for affecting the volume of production of and the prices of the intra-state domestic production of certain animal and vegetable fats and oils, and, for this additional reason, these provisions of Section 602½ do not constitute a tax within the scope or meaning of Section 8 of Article I of the Constitution. They cannot be sustained as an import tax or as a regulation of interstate or foreign commerce, for the imposition is not upon all imports of coconut oil from the Philippine Islands but upon the processing in the United States of coconut oil, and all commerce in the oil, whether foreign or interstate, ceases prior to any processing. The direction in the statute for payment of the collection into the Philippine Treasury is not, correctly speaking, an appropriation, but is a direct transmission of the collections to the Philippine Treasury, the revenue agencies of the United States acting merely as a conduit or as collecting and transmitting agencies. If, for purpose of consideration of the constitutional questions, said direction be assumed to be an appropriation, then these Philip-

pine coconut oil provisions also violate Clause 7 of Section 9 of Article I of the Constitution, together with the Fifth Amendment, in that, arbitrarily and without any thought whatever as to relationship between the amount and the need, the entire proceeds of the tax, no matter how little or large the amount may prove to be, are collected for payment bodily into the Philippine Treasury.

Reasons for Granting the Writ.

The United States District Court has decided an important question of federal law which has not been but should be settled by this Court, and the public interest will be promoted by prompt settlement in this Court of the question involved, namely, the constitutionality of the Philippine coconut oil tax provisions of Section 602½ of the Revenue Act of 1934.

As is illustrated by the facts concerning the petitioner, the tax has a destructive effect upon the possibility of profit by many soap manufacturers, and is, owing to doubts about its constitutionality, a disturbing, dislocating and confusing element in the soap industry and, no doubt, in other industries which use coconut oil.

About ten injunction suits were filed in different parts of the country. In two of the cases, the District Courts held the statutory provisions to be unconstitutional and granted permanent injunctions. The Circuit Court of Appeals reversed these judgments exclusively upon the remedy question and did not go into the constitutional question. Certiorari to the Court of Appeals in these two cases was petitioned for in this Court and denied.

In three of the injunction cases, the District Court refused injunction exclusively upon the remedy question, without going into the constitutional questions. In two of these, appeals were filed in the Circuit Court of Appeals,

where the cases are stated to be held pending an authoritative decision on the constitutional question.

In five of said injunction cases, temporary restraining orders have been issued, and the cases are pending in the District Courts at that stage.

In addition to the instant case, one refunder action has been brought, and, as in the present case, the Government's demurrer sustained.

An injunction case was brought in the District of Columbia to enjoin the transmission to the Philippine Treasury of the collected proceeds of the processing tax on Philippine coconut oil. The Court of Appeals in and for the District of Columbia has denied the injunction exclusively on remedial grounds and without any ruling on any constitutional issue. This Court denied certiorari, and the case has been or is about to be appealed to this Court. In the meantime, owing to the doubts about the constitutionality of the tax, none of the moneys have been transmitted to the Philippine Treasury, and the accumulated and non-transmitted collections amount to about $41,000,000.00. As has been above outlined, the tax constitutes a violation of the agreement made with the Philippine Islands in the Philippine Independence Act, and the situation constitutes one of the serious strains upon the relations between the United States and the new Philippine Commonwealth.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named the full and complete transcript of the record of all proceedings in the case numbered and entitled on its Docket as No. 7607, *The Cincinnati Soap Company, a cor-*

poration, Appellant, v. *The United States of America, Appellee,* and that the judgment of the United States District Court in and for the Southern District of Ohio, Western Division, in the case numbered and entitled No. 5049 At Law, *The Cincinnati Soap Company, a corporation, plaintiff,* v. *The United States of America, defendant,* may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

The Cincinnati Soap Company,

By: Alfred Bettman,

Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term 1936.

No. ———.

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinion Below.

In the judgment entry (R. 22) the District Court found that "the provisions of Section 602½ of the Revenue Act of 1934, imposing a tax upon the processing of coconut oil wholly of Philippine production or produced wholly from materials of Philippine growth or production, are valid and constitutional." The said court wrote a short memorandum entitled "Decision on Demurrer" (R. 23) in which the court simply stated that, as the parties had requested that the case be expedited, it was not writing an opinion, that it had read and thoroughly considered the briefs and

arguments, and found the demurrer well taken upon the ground set forth in the demurrer, namely, that the tax was assessed and collected under valid and constitutional laws of the United States.

II.

Jurisdiction

(a) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

(b) The judgment sought to be reviewed was entered in the United States District Court in and for the Southern District of Ohio, Western Division, on January 5, 1937 (R. 22). The appeal was filed in the Circuit Court of Appeals for the Sixth Circuit and docketed in that court on January [illegible], 1937. (R. first page).

(c) The case is for a refunder of a tax imposed by provisions of a federal statute on the ground of the unconstitutionality of those provisions. It was brought in a United States District Court, and heard and decided upon the petition of the plaintiff (petitioner) as amended and the Government's demurrer thereto. (R. 1-14 incl., 16-25 incl.) Appeal was filed in a United States Circuit Court of Appeals, (R. first page).

III.

Specification of Errors to be Urged.

The order and judgment of the United States District Court in and for the Southern District of Ohio, Western Division, are erroneous and unjust to the plaintiff:

FIRST: In sustaining the demurrer of the respondent to the petition of the petitioner as amended.

SECOND: In rendering judgment for the respondent upon the petition of petitioner as amended and the demurrer of defendant thereto.

THIRD: In holding and determining that the provisions of Section 602½ of the Revenue Act of 1934 which imposed a tax upon the first domestic processing of Philippine coconut oil are valid and constitutional.

FOURTH: In failing to hold and determine that the provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of a tax upon the domestic processing of such Philippine oil, are invalid and unconstitutional.

FIFTH: In failing to determine and hold that said provisions of the Revenue Act of 1934 are invalid and unconstitutional for the reason that they do not fall within and are beyond the scope of the powers granted to Congress by the Constitution of the United States.

SIXTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 are invalid and unconstitutional because they constitute an unconstitutional exercise of the powers of Congress under the Constitution of the United States.

SEVENTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 are unconstitutional and invalid for the reason that they do not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof.

EIGHTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 if treated as an exercise of the taxing and appropriation powers of Congress, are an invalid and unconstitutional delegation by Congress of its legislative powers.

NINTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution of the United States.

TENTH: In failing to hold and determine that the exaction on the processing of Philippine coconut oil contained in said provisions of the Revenue Act of 1934 is not a true tax but is a regulation which is not within the fields of power granted by the Constitution to Congress and, in that respect, a violation of the Tenth Amendment of the Constitution of the United States.

ELEVENTH: In failing to hold and determine that, if treated as a tax and an appropriation of the proceeds thereof, said provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution of the United States.

TWELFTH: In failing to overrule the demurrer of the respondent to the petition of petitioner as amended.

IV.

Statutes and Other Material Involved.

Section 602½ - (a) and (g) of the Revenue Act of 1934, (c. 277), 48 Stat. 680, 763, U. S. C. Title 26, Sec. 999). The whole of Section 602½ is set forth in the Appendix, pages 45-48 incl. infra.

The Philippine Independence Act of March 24, 1934, (c 84 - No. 1, 48 Stat. 456, U. S. C. Title 48, Sec. 1231-1247 incl.) (Appendix 48-65 incl.)

Ordinance Appended to The Philippine Constitution, set forth on pp. 66 to 69 incl. of Appendix, infra.

V.

Statement of the Case.

The statement of the case which has been given under heading "A" of the Petition for Writ of Certiorari (supra page 2), is a sufficient statement for the purposes of this brief, and, in the interest of brevity, is not repeated here.

VI.

Summary of the Argument.*

FIRST: The levying of a tax upon and collection thereof from one group, such as soap manufacturers and other processors of Philippine coconut oil, for payment of the proceeds thereof into the Treasury of the Philippine Government does not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof, for the reasons:

(a) Even if the Phillippine Islands could be treated as part of the United States, the collection of the tax from one group in the United States for payment thereof exclusively into the Philippine Treasury would be too local a purpose to come within the meaning of the word "general" in the expression "general welfare."

(b) Even before the Philippine Independence Act, the Philippine Islands were not a part of the United States within the meaning of the revenue provisions of the United States Constitution, and the collection of the tax for pay-

*There are points included in this argument which are sometimes expressed as a contention that the exaction in question is not a true tax. For the sake of simplicity in presentation, the word tax will be used without such prefixes as "so-called" or "alleged" or without putting the word in quotation marks, as the designation of the exaction from or imposition upon the petitioner's use of Philippine coconut oil in the manufacture of soap.

ment into the Philippine Treasury would not then or at any time have fallen within the meaning of the expression "general welfare of the United States."

(c) This status of the Philippine Islands as not a part of the United States within the revenue provisions of the Constitution has been strengthened by the Philippine Independence Act and the creation of the new Government of the Philippine Commonwealth, which, while postponing complete independence for 10 years, gave to the Philippine Islands during those 10 years, a status, in domestic and constitutional law, of independent territory and government in all respects except those in which the Independence Act expressly reserved certain powers to the United States. The Philippine coconut oil provisions of the Revenue Act of 1934 could not have been and were not an exercise of any of these reserved powers.

(d) These provisions of the Revenue Act of 1934 do not provide for any revenue whatever to or for the government of the United States or for the support of the financing of the government of the United States. On the contrary, these provisions expressly exclude revenue to or for the United States as the purpose of the tax by providing that the entire proceeds of the collections shall go into the Philippine treasury. As appears from the legislative history of these provisions, the reasons for this was that in the Philippine Independence Act the United States agreed that it would not levy any tax on Philippine coconut oil up to a specified amount, and Congress, in these provisions of the 1934 Revenue Act, breached that agreement and then sought to palliate the breach by making the tax a levy and collection for the Philippine Treasury exclusively.

(e) The tax cannot be interpreted or supported as a financing of the performance by the United States Government of its reserved powers or its functions or responsibilities in or in relation to the Philippine Islands or the affairs thereof. For the proceeds of the exaction are not specified for payment for or of any activities of any officers or departments or employes or agents of the United States or for the payment of any of the expenses of any activity or responsibility of the United States in the Philippine Islands. On the contrary, the entire proceeds are required to be placed at the exclusive disposal of the government of the Philippine Commonwealth. No control over the expenditure of the money is reserved to the United States government or any of its officers, and there is no designation in the statute of the purposes for which the Philippine government may or shall expend the collections placed in its treasury. Any attempt to treat the Philippine Commonwealth as an instrument of the United States to determine the uses to which the moneys shall be put would produce a violation of the constitutional principle that Congress cannot delegate its legislative powers.

SECOND: The tax is levied and collected for the Philippine Treasury from a group of soap manufacturers and other processors for a purpose, namely, payment into the Philippine Treasury, in which said group has no interest and is in nowise a beneficiary. The tax is high and burdensome. For these reasons, as well as for the reason that they do not fall within the taxing powers granted to Congress by the Constitution, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution.

THIRD: Those provisions of Section 602½ which relate to the imposition and collection of the processing tax on Philippine coconut oil and those which provide that the collections shall be transmitted to the Philippine Treasury are inseparable. This appears from the face of the statute, and the legislative history of these provisions shows unmistakably that they are inseparable parts of one legislative purpose and that the levying and collecting provisions would not have been enacted without the provisions for transmitting the collections to the treasury of the Philippine government.

FOURTH: As appears from both the face of Section 602½ of the Revenue Act of 1934 and its legislative history, the provisions regarding Philippine coconut oil represent and were part of a plan for promoting the production volume and the prices of the intra-state production of certain domestic animal and vegetable fats and oils and for affecting the classes of oils to be used by soap manufacturers and others in the intrastate production of soap and other domestic manufacturers. For this reason also, said Philippine oil provisions of said section do not constitute a tax within the meaning of Clause 1, Section 8 of Article I of the Constitution, being neither for the raising of revenues for the support of the Government of the United States nor a regulatory measure within any regulatory field granted to Congress by the Constitution.

FIFTH: The tax cannot be justified as an import tax or as a regulation of interstate or foreign commerce, for the reasons:

(a) It is not laid on imports, nor is all coconut oil from the Philippine Islands subjected to the tax, but only that portion of the imported oil which is processed in the United States; and

(b) All commerce in the oil, whether foreign or interstate, ceases before the use of the oil, which use is the subject of the tax.

SIXTH: If the provision for transmission of the collections to the Philippine treasury were to be treated as an appropriation by Congress, then the Philippine coconut oil provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution, together with the Fifth Amendment, in that arbitrarily, without any relationship between amount and need or any specification as to the functional activities for which the money is to be expended, the entire burden of the tax is placed on one group of the population of the United States and the entire proceeds of the tax are required to be paid bodily into the Philippine Treasury.

VII.

ARGUMENT

The Philippine Coconut Oil Tax Provisions of Section 602½ of the Revenue Act of 1934 Do Not Come Within the Taxing Power Set Forth in Section 8, of Article I of the Constitution.

The tax is levied and collected upon one group in the United States, namely, soap manufacturers and other processors of Philippine coconut oil, for payment, indeed practically direct payment to another group, namely, the Treasury of the Philippine Commonwealth. Obviously this was not to pay the debts or provide for the common defense or general welfare of the United States or to provide revenues for the United States for support of the government of the United States. Not one penny of it is made available to the United States. It is therefore not laid and collected for any of the purposes specified in

Clause 1, Section 8 of Article I of the Constitution. Without other future legislation, it would be unlawful to place the proceeds of the Philippine coconut oil processing tax in the general treasury, and it would be unlawful for any department, officer, agent or employe of the United States to touch or expend one penny of those proceeds for the purposes of the United States government.

It goes without saying that statutory provisions cannot be made a constitutional exercise of the federal taxing power by the simple devise of using the word "tax" or "revenue" or by including them in a revenue act which, in its other parts, is truly a taxation and revenue statute. See *Nigro* v. *United States*, 276 U. S. 332. In *Dooley* v. *United States*, 183 U. S. 151, 157, this Court said:

> "The mere fact that the duty passes through the hands of the revenue officers of the United States is immaterial, in view of the requirement that it shall not be covered into the general fund of the Treasury, but be held as a separate fund for the government and benefit of Porto Rico."

The Revenue Act of 1934 dealt with many kinds of taxes (income, etc.) and with processing taxes upon oils other than Philippine coconut oil; but only in the case of Philippine coconut oil was there the express provision that the proceeds shall not go into the general fund of the Treasury of the United States.

(a) The Word "General" in the Expression "General Welfare" in Article I, Section 8 of the Constitution is a Limitation of the Federal Taxing Power and Excludes Taxation Exclusively for a Geographically Local Beneficiary.

This and other courts have interpreted the word "general" in the expression "general welfare" in Article I,

Section 8, Clause 1 of the Constitution, and have declared that the word "general" has a significance as a limitation upon the federal taxing power, and that one limitation created by this word "general" is that which excludes an objective which is entirely local.

See: *United States* v. *Butler*, 297 U.S. 1, 66.
Passenger Cases in 1849 (*Smith* v. *Turner*), 7 Howard, 283, 446, where this Court said:

"Nor has Congress power to lay taxes to pay the debts of a state nor to provide by taxation for its general welfare. Congress may tax for the Treasury of the Union and here its power ends."

See also: *Washington Water Power Co.* v. *City of Coeur D'Alene*, District Court of Idaho, 9 Fed. Supp. 263.
Story, Vol. 1, *Chap. XIV*, paragraph 932, which includes the passage:

"If the defense proposed by a tax be not the common defense of the United States, if the welfare be not general but special or local, as contradistinguished from national, it is not within the scope of the Constitution."

The Philippine Islands are obviously at least as local as any state. It must be remembered, and this will be elaborated somewhat later in this brief, that the tax is not for the federal government's expenditures in and for the Philippine Islands, but is collected solely and exclusively for transmission untouched and uncontrolled into the treasury of the new Philippine Commonwealth.

(b) The Philippine Islands Have Never Been a Part of the United States Within the Meaning of the Revenue Clause of the Constitution.

There is no express authority in the Constitution to levy taxes on persons or corporations in the United States for payment to the treasury of a dependency or insular possession of the United States. Prior to the passage of the Philippine Independence Act, the Philippine Islands had the status of an insular possession or dependency of the United States. That Act reduced the dependency, made an immediate enlargement of the degree or sphere of independence and provided for ultimate complete independence. This effect of the Independence Act will be discussed later; but even prior to the passage of that Act, that is during the dependency status, the courts had determined that the Philippine Islands were not a part of the United States within the revenue clauses of the Constitution.

Neuss Hesslein & Co. Inc. v. *Edwards, Collector of Internal Revenue,* 24 Fed. (2) 999, dealt with the complaint of a tax discrimination against corporations organized in the United States in favor of corporations organized under the laws of Porto Rico and the Philippine Islands, and plaintiff relied upon the provision of the Constitution which provided that

> "• • • all Duties, Imposts and Excises shall be uniform throughout the United States;"

The court held that said provisions did not apply because Porto Rico and the Philippine Islands were not part of the United States within the revenue provisions of the Constitution. This conclusion resulted from the decision of this Court in *Downes* v. *Bidwell,* 182 U.S. 244, where the question was whether a duty on articles im-

ported from Porto Rico into the United States was subject to the Constitutional requirement that duties, imposts and excises be uniform "throughout the United States." This Court held that Porto Rico and the other insular possessions ceded by Spain were not foreign countries in an international sense, but were foreign to the United States in a domestic sense because they had not been incorporated into the United States and therefore were not a part of the United States within the meaning of the revenue clauses of the Constitution; that the duty on imports from Porto Rico was not an exercise of the taxing power but an exercise by Congress of its power as the legislative body over or of the insular possessions and dependencies of the United States. Surely "United States" has identical meaning in the phrases "throughout the United States" and "of the United States" occurring in the same clause of the Constitution; and, consequently, the levy on and collection from processing and processors within the United States for the treasury of the Philippine Commonwealth cannot be sustained as an exercise of federal taxing power or the powers granted to Congress in Article I, Section 8 of the Constitution.

(c) The Philippine Independence Act, While Postponing Complete Independence, Reduced the Degree or Fields of Dependency and Increased the Degree or Fields of Independence. The Levy on Coconut Oil Processing for Payment Into the Philippine Treasury Bears no Relationship Whatever to the Financing of the Powers of the United States reserved in the Independence Act. The Tax is Levied for the Philippine Government, not for the Government of the United States, and is Consequently Outside the Constitutional Scope of the Federal Taxing Power.

We now come to the Philippine Independence Act, and to the question of the status created by that Act and its bearing on the purpose and validity of Philippine Oil provisions of the Revenue Act of 1934.

The Independence Act provided, from the time of the adoption of a Constitution by the people of the Philippines, for an immediate grant of independent powers vastly greater than the previous Philippine government had possessed. Full and complete independence was postponed for a ten-year period, but during that period (and it was during that period that the coconut oil processing tax in this case was imposed) the degree of dependency was or the fields of dependency were greatly lessened and the degree or fields of independence greatly enlarged; with the consequence that, regardless of the effect of the Independence Act as regards international relationships with other nations, or as a matter of our domestic or constitutional law, the Philippine Islands became and are less a possession of and less a dependency of the United States than before. As under the previous statutes the Philippines were held by this Court to be not within the revenue provisions of the Constitution, a fortiori impositions of taxes on United States persons and pro-

cessings for the treasury of the new Philippine Commonwealth are not within the scope of the "general welfare of the United States" in Article I, Section 8 of the Constitution after the Independence Act went into effect.

The Independence Act (set out in full in Appendix) and the Ordinance appended to the Philippine Constitution (also set out in the Appendix) contain the specifications of the powers which the United States reserved for the 10-year period, and thereby defined the powers which, as a matter of domestic or constitutional law governing in this case, the United States has retained. It may be admitted that Congress may exercise its taxing powers to finance the exercise of these reserved powers of the United States. These reserved powers will be found in the following portions of the Independence Act: Section 2 (a) (6), (9), (10), (12), (13), (14), (15); Section 6(a), (b) and (c); Section 7(1), (2), (4), (6); Section 8(3); (See Appendix hereto pages 49, 50, 54. 55, 57, 58, 59, 61); and in the following portions of the Ordinance appended to the Constitution of the Philippine Commonwealth; Section 1 (6), (9), (10), (12), (13), (15), (16), (18), (19), Section 2 (Appendix pages 66-69 incl). Section 9 of the Independence Act (Appendix 62) releases the United States from all obligations on the bonds or other obligations of the Philippines.

A levy of taxes on persons or processors within the United States for transmission of the entire proceeds to the treasury of the new Philippine Commonwealth is obviously not for the purpose of revenues for or to the United States with which to pay for the exercise by the United States of its own powers. The statute requires the transmission to the Philippine Commonwealth without the slightest condition, limitation or provision that the money shall be expended for anything which has any relationship whatever to the performance by the United

States of its powers, duties or responsibilities, in relation to the Philippines or the financing thereof. An examination of these powers reserved by the United States will be searched in vain for the discovery of any power, activity or responsibility of the United States which is to be or can be or will be financed by the putting of the money into the Philippine treasury free of any control by the United States. Indeed, any such control would be a contradiction of the very purpose of the Philippine coconut oil provisions of the Revenue Act of 1934, which was that the Philippine Commonwealth shall be the exclusive beneficiary of the moneys produced by the violation of the agreement made by the United States in the Independence Act. Those moneys were made available exclusively for the financing of the exercise by the Philippine Commonwealth of its own powers of self-government. The result is that the soap and other manufacturers within the United States are required by the statutory provisions before us to pay into the Philippine Treasury moneys with which to finance the exercise by the Philippine Commonwealth of its own powers of self-government and not for the financing of those matters for which the United States has any responsibility or over which the United States has any control or exercises any powers or has need for revenue. If the regular congressional appropriation acts are examined they will be found to provide entirely different funds to go into the United States Treasury for the financing of the functions of the United States in relation to the Philippines. In all the years before the Independence Act, the United States had never, for the operations of the Philippine government, attempted to exercise any taxing power on its own citizens. After the Independence Act, which lessened the responsibilities of the United States to the Philippine people and diminished the province of the United States in the Philip-

pines and increased the self-government of the Philippines, Congress for the first time, in this Revenue Act of 1934, attempted to impose taxes on one group of citizens of the United States for the supplying of money to the Philippine treasury upon which the United States has no power to draw for any of its own operations in or out of or concerning the Philippines.

If the purpose of Congress had been to finance the powers and responsibilities of the United States within or relating to the Philippine Islands, without any control over the expenditure or any specification or itemization of what was to be done with the money, that is, without anything in the nature of an appropriation of the money by Congress itself as distinguished from a mere direction that it be paid into the Philippine treasury, such a provision would fall afoul of the constitutional principle that Congress cannot delegate its legislative powers. The determination of the activities for which exactions are to be made and collected and the proceeds expended is a legislative province, and Congress cannot delegate that determination to the Philippine Commonwealth or to any other body.

The Philippine coconut oil provisions of the Revenue Act of 1934 were not, therefore, for the general welfare of the United States within the meaning of Clause 1 of Section 8 of Article I of the Constitution; and there is no provision in that section nor in any other clause or section of our Constitution which grants the power to enact any such provisions. They provided a very burdensome imposition upon one group of the citizenry of the United States for payment exclusively into the treasury and thereby within the unconditioned control of the government of a locality which was not even a part of the United States. As such they fall entirely outside the constitutional scope of the taxing powers of Congress.

Philippine Coconut Oil Provisions of Revenue Act of 1934 Violate the Fifth Amendment.

The provisions of Section 602½ of the Revenue Act of 1934 produce a violation of the due process of law clause of the Fifth Amendment. There have been expressions in judicial opinions to the effect that this clause is not applicable to federal tax laws. Any such statement is, however, too absolute and sweeping; and in addition to the invalidity of the purported exercise of the taxing power by reason of its being beyond the scope of that power as granted in the Constitution, its invalidity is strengthened, so to speak, by the prohibitions of the Fifth Amendment.

In *Brushaber* v. *Union P. R. Co.* 240 U. S. 1, 24, in which this Court held the due process clause to be not a limitation upon the taxing power of Congress, the opinion contained this passage:

> "• • • this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the 5th Amendment; or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

This quotation applies to the Philippine coconut oil tax. To pick out one group of American manufacturers for an enforced, large and burdensome contribution into the Philippine treasury is grossly and patently arbitrary. The soap manufacturers in the United States have no more interest in the state of the Philippine Treasury than any other manufacturers in or citizens of the United States.

1 *Willoughby on the Constitution*, p. 584, states:

> "Though the taking of the property in the form of a tax is thus not in itself a taking without due process, it may become such by reason of the purpose for which * * * the tax is levied, assessed and collected."

It is impossible to understand why the constitutional limitations placed, for instance, in the Fifth Amendment should apply any less to one power expressly granted to Congress than to another granted power, less to the taxing power, for instance, than to the interstate commerce power. The federal courts have often had occasion to invalidate a state taxation statute for violation of the due process of law clause of the Fourteenth Amendment, and logic and consistency would seem to lead to the conclusion that the same words in the two Amendments mean substantially the same and apply to all exercises of all legislative powers.

The Tax is not Sustainable as a Tax on Imports of Coconut Oil from the Philippine Islands, for it is not an Import Tax.

The tax is not levied upon imports of coconut oil from the Philippine Islands nor collected upon imports nor from importers. As stated in the petition and admitted by the Government's demurrer, some of the coconut oil imported from the Philippines is not processed in the United States and therefore not subject to this imposition. Not the importation but the later domestic processing of some of the imported oil is the subject of the imposition. Both the importation from the Philippine Islands and the interstate commerce in the oil are completely terminated before any processing begins.

As held in *Downes* v. *Bidwell,* 182 U. S. 244, a tax on imports from insular possessions, such as the Philippine Islands, is not an exercise of the federal taxing power but an exercise of the power to regulate the affairs of the insular possessions. Here, however, Congress did not attempt to exercise any regulatory power over the Philippines; for it imposed no import duty upon Philippine coconut oil, but made a purely domestic imposition upon a selected group of domestic manufacturers who do not import any oil from the Philippines.

The Provisions of Levying the Tax and Provisions Placing the Proceeds in the Philippine Treasury are not Separable.

In their brief in the District Court, the attorneys for the Government contended that the part of the provisions of Section 602½ of the Revenue Act of 1934 which imposed 3 cents a pound on all domestically processed Philippine coconut oil are separable from the part which placed the proceeds in the Philippine treasury, and that the Court may simply eliminate the later and sustain the former as purely and simply a levy of a tax and nothing but that. From the face of these provisions, however, it is quite obvious that the part regarding the imposition and the part regarding the collections and the payment thereof into the Philippine Treasury are so intertwined and integrally related, are so much the parts of one unitary whole, that the separation of one and the ignoring of the other part would inevitably destroy the legislative intent as expressed in the statute itself and, in the language of the opinion *Railroad Retirement Board* v. *Alton RR. Co.* 295 U. S. 330, would produce "an effect altogether different from that sought by the measure viewed as a whole."

This is corroborated by the history of these provisions, which history demonstrates beyond any doubt that Congress would not have included the tax in the Revenue Act of 1934 without attaching thereto provisions for the unconditional transmitting of the entire collections to the Philippine treasury.

As introduced and as passed by the House of Representatives, the Revenue Bill of 1934 made no distinction between the Philippine coconut oil taxes and the other processing taxes included in the bill, and provided that all collections were to be covered into the general fund of the Treasury of the United States. That was the condition of the bill when Congress enacted the Philippine Independence Act which expressly exempted annually from any import duty the first 2,000 long tons of coconut oil from the Philippines, that being approximately the then amount of annual importation. When the bill reached the Senate floor, the President of the United States and leading Senators called attention to the fact that the coconut oil provisions of the then pending Revenue bill would violate this agreement made with the Philippine people, and the letter written by the President asked that Philippine coconut oil be eliminated from the bill. (See *Congressional Record* 73 *Congress, Second Session,* Vol. 78, Part 6, p. 6317.) Thereupon the amendment was introduced which inserted into the bill the provision that the collections on Philippine coconut oil should not go into the general revenue fund of the Treasury of the United States but shall be transmitted to the Philippine treasury. The House refused to concur; the Senate insisted upon this amendment and, in the end, the House gave in and the amendment was retained. This is a brief summary of a long and intense contest. The legislative history of the bill corroborates what is apparent upon the face of the

measure and demonstrates beyond all genuine doubt that the levy of the tax and the collection of it for the Philippine treasury were parts of an integral, inseparable whole.

The purpose of an exercise o the taxing power is one of the decisive factors in the determination of the question of constitutional validity.

The test of separability is, of course, not the physical separability of the words of a statute, that being always possible. The test is whether the exaction and the purpose thereof are integral parts of a unitary legislative plan and of an integrated legislative intention; and, in the measure before us, Congress, faced with the fact that it would not levy the tax without violating the obligations which the United States had assumed in the Philippine Independence Act, met the problem by the unified, single and connected plan of exacting and collecting the money for the Philippine treasury.

The same contention of separability was advanced by the Government in the case of *United States* v. *Butler*, 297 U. S. 1, 58, and overruled by this Court in these words:

> "• • • The government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment.
>
> "The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government."

The dissenting opinion in the Butler case did not turn upon the separability of the levying and expending provisions of the statute, but upon the validity of the latter or their non-impairment of the validity of the former.

To ignore the provisions of Section 602½ of the Revenue Act of 1934 transmitting the collections on Philippine coconut oil to the Philippine treasury would be to fly in the face of the fact that there is nothing in the statute which makes any of these collections available to the United States government or any activity of the United States, but, on the contrary, the statute, in effect, expressly disposes of those collections elsewhere. The provision that transmission to the Philippine treasury shall cease if and when the Philippine Commonwealth subsidizes the producers of coconut oil cannot affect any collection made previous to such subsidy and, as yet no such subsidy has been granted. But even if one should come to be granted, there is no provision in the Revenue Act of 1934 for covering the proceeds of the tax into the United States Treasury or making it available for appropriations made by Congress, and, if any such situation should eventuate, it would take a new act of Congress to dispose of subsequent collections. When, therefore, the attorneys of the Government ask this Court to eliminate from the statute the vital provisions regarding the transmission of the collections to the Philippine treasury, it is asking this Court not only to drop words out of a statute but to insert something into the statute which is not now there, namely, that the moneys shall go into the general fund of the Treasury of the United States for expenditures under congressional appropriations. That something requires a legislative act and is, of course, not within the power of the judicial department to insert.

We cannot assume that Congress, if it should come to be faced with the necessity of determining this legislative

question, would decide in favor of the continued exaction of the tax. It is not only possible but more probable that Congress would decide in favor of terminating the tax; for, as we have seen, the tax, if treated as a tax for the United States revenue as distinguished from an enforced contribution to the Philippine treasury, would violate, without palliation, the solemn agreement of the United States made in the Philippine Independence Act. Immediately after the enactment of the Revenue Act of 1934, the President wrote to Congress asking it to repeal all the Philippine coconut oil provisions of the Act regarding Philippine coconut oil, and a bill was introduced for such repeal. At any rate, the validity of an existing statutory provision cannot turn upon assumptions concerning a future statute not yet enacted.

In *Railroad Retirement Board* v. *Alton RR. Co.*, 295 U. S. 330, 361, dealing with a statute which contained the conventional saving or separability clause, this Court said:

> "• • • The statute contains a section broadly declaring the intent that invalid provisions shall not operate to destroy the Act as a whole. Such a declaration provides a rule which may aid in determining the legislative intent, but it is not an inexorable command. • • • It has the effect of reversing the presumption which would otherwise be indulged, of an intent that unless the act operates as an entirety it shall be wholly ineffective • • • But notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole. • • • In this view we are confirmed by the petitioner's argument that as to some of the features we hold unenforcible, it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without

> them. They so affect the dominant aim of the whole statute as to carry it down with them."

To eliminate all the provisions relating to the collection of the tax for the Philippine Treasury, leaving nothing but the bare words of a levy, would constitute the legislative act of rewriting the Philippine coconut oil provisions of the Revenue Act of 1934 so as to give an effect altogether different from that sought by those provisions viewed as a whole.

As stated by this Court in *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165:

> "• • • and this presumption must be overcome by considerations that make evident the inseparability of the provisions or the clear probability that the legislature would not have been satisfield with the statute unless it had included the invalid part."

Here no guesswork is necessary. It is as certain as anything about legislation can ever possibly be that Congress refused to breach the Philippine Independence Act which it had just enacted without healing or palliating that breach by making the tax one for the Philippine Commonwealth instead of for the United States.

In *Dorphy* v. *Kansas*, 264 U. S. 286, 290, cited in the above-cited Utah Light Company case, this Court said regarding separability:

> "• • • But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it, and that the legislature intended the provisions to stand, in case others included in the act and held bad should fall."

It is clear that the transmission of the collections to the Philippine Treasury was, in the mind of Congress, an

indispensible condition to the levying of the tax at all, for only in that way could the honor of the United States be saved to some extent from the disgrace of a breach of faith with the Philippine people. The effort of the Government's attorneys, as embodied in their brief below, to have the courts ignore everything except the bare imposition of the tax is tantamount to asking the courts to cause the United States to commit this breach of honor which Congress expressly sought to avoid.

It is plain that the sound and authoritative principles of separability do not permit the Philippine coconut oil provisions of Section 602½ of the Act of 1934 to be converted into a simple tax for revenue by the simple process of cutting out those of the integral portions of the section which provide where the money shall go.

The Philippine Coconut Oil Provisions of Section 602½ of the Revenue Act of 1934 Represent and are Part of a Plan for Regulating Intrastate Manufacture of Soaps and Regulating the Intrastate Production of Domestic Oils.

Why did Congress wish to impose a heavy burden upon American soap manufacturers and at the same time exclude the United States from using the proceeds? The statutory provisions contain on their face at least an indication of the answer to this question, for the provision terminating the transmission of the moneys to the Philippine Commonwealth if and when that Commonwealth grants a subsidy to Philippine coconut oil producers, plainly indicates that the purpose or objective of these provisions was the placing of Philippine coconut oil at a disadvantage as compared with competitive domestic products and thereby affect the oils used by American soap and other manufactures and the volume of oils produced in

the United States or the prices at which they could be sold or both.

This indication from the face of the statute is completely demonstrated by the legislative history of Section 602½ of the Revenue Act of 1934, which shows that the inclusion in the Act of a tax on Philippine coconut oil was at the instance of the producers of certain domestic oils, lard, cottonseed oil, tallow, soy-bean oil, fish oil and butter. This inclusion was based on the request that by this means the parity which Congress had established in the Agricultural Adjustment Act for other agricultural products might be obtained for these domestically produced oils.

See hearings *House-Committee on Ways and Means, Revenue Revision*, 1934, page 579.

Also *Congressional Record, 73rd Congress, 2nd Session*, Vol. 78, Part 3, pages 2512 and 2513; 2524; 2528 to 2532; 2535 and 2536; 2599 to 2600; 2611 to 2616; 2642; 2682; 2683; 2692 to 2702; 2770 and 2771; 2783 to 2786; 2790 to 2797; 2800 and 2801; 2804; 2809; 2890 and 2891; 2897; 2899; 2913; 2916; 2927 to 2930; 2933 and 2934; 3006 and 3008.

In the *Child Labor Case* (*Bailey* v. *Drexel Furniture Co.*) 259 U.S. 20, the statute on its face simply levied a tax whose proceeds would go into the United States Treasury; so there was not, as there is in the case at bar, express provision excluding collection of the tax as revenue for the United States government. Both in that case and in the instant case the tax was upon a part or feature of the process of manufacture; there upon the use of labor of a certain kind, here upon the use of materials of a certain kind. This Court refused to accept the congressional designation of the measure as a taxation or a revenue measure, and proceeded to analyze the nature of the objective and came to the conclusion that, despite the congressional phraseology, the measure was not a taxation

or revenue measure but a regulatory measure in a field lying outside of the federal province.

In the Child labor case this Court discussed the state bank note case, *Veazie Bank* v. *Fenno*, 8 Wall. 533, and sought to distinguish it by the fact that the statute levying the destructive tax on state bank notes did not show on its face any purpose other than revenue. That distinction is not available in the case at bar, because here the statutory provisions disclose on their face that they are not for revenue. Indeed, the Veazie case has come to be explained as dealing not with the taxing power but the power to regulate the currency. In the opinion (p. 541) this Court said:

> "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would, undoubtedly, be an abuse of the power if so exercised as to impair the separable existence and independent self-government of the states, *or if exercised for ends inconsistent with the limited grants of power in the Constitution.*" (Italics ours.)

Applying this quotation, the statutory provisions now before this Court attempt to exercise the taxing power for ends inconsistent with the limited grant of power in the Constitution, for, as we have seen from earlier portion of this brief, there is no grant of power in the federal government to collect from one group of American manufacturers money for the Treasury of the Philippine Commonwealth, or as we see from the present portion of this brief, for affecting intrastate manufacturing or intra-state agricultural production.

In the Child Labor case this Court also discussed *McCray* v. *United States*, 195 U. S. 27, the oleomargerine statute case. That statute varied the rate of tax accord-

ing to the color of the oleomargerine, lending support to the contention that the law was intended to destroy the market of yellow oleomargerine. This Court held that that purpose was not readable from the face of the statute and that there was nothing on the face of the statute to indicate a purpose other than revenue. In the case at bar, the face of the statute excludes the revenue purpose.

In *United States* v. *Doremus*, 249 U. S. 86, the anti-narcotic statute was on its face a revenue act and nothing but a revenue act, together with certain provisions which the Court held to be administrative details for the collection of the tax, and, as interpreted by the court, was a simple levy of taxes on the manufacture and sale of drugs; the proceeds, like other internal revenue, to go into the Treasury for the support of the United States government. The Philippine coconut oil provisions of the 1934 Act cannot possibly be so interpreted.

Hill v. *Wallace*, 259 U. S. 44, was decided at about the same time as the Child Labor Case and dealt with a statute taxing contracts for future delivery of grain, and this was held unconstitutional because of the elaborate provisions in the act whereby the tax was lifted if certain conditions were fulfilled, which were held by this Court to demonstrate that the statute was not for revenue. The decision is authority for the unconstitutionality of the Philippine coconut oil provisions in the Act of 1934, which contain stronger proof that the tax is not for United States revenue than did the grain futures statute.

This series of cases preceding the Butler case may be said to have developed the principle that if there be nothing whatever on the face of the statute to indicate any purpose other than revenue for the United States Government, the Court will assume the purpose to be such revenue; but that if the statute indicates a different purpose,

the court will treat the statute as not a tax statute and will then pass on the constitutional issue of whether the actual purpose falls within the constitutional federal field.

The above cited decisions and opinions of this Court previous to *United States* v. *Butler*, 297 U. S. 1, invalidate the Philippine oil provisions of the Revenue Act of 1934; and obviously those provisions could not be upheld consistently with the decision in the Butler case and are invalidated by that decision; nor is there anything in the dissenting opinion in the Butler case which supports the validity of statutory provisions which on their face are not a measure for raising revenue for the United States nor a regulatory measure in a field of federal regulatory power.

Statutory provisions which constitute a plan or purpose of regulation in a field outside of the constitutional federal field falls afoul of the Tenth Amendment.

If Treated as a Tax and Appropriation Measure, the Philippine Coconut Oil Provisions of Section 602½ of the Revenue Act of 1934 Violate Clause 7 of Section 9 of Article I of the Constitution.

Clause 7 of Section 9 of Article I of the Constitution provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law". While expressed negatively, it surely includes or produces the positive duty of Congress to determine, by means of what it calls "appropriations made by law", the purposes for which the moneys in the treasury shall be expended and the amounts to be expended respectively for these purposes. This power of appropriation is a legislative power, indeed one of the most important of legislative powers, and has a most decisive influence upon the cost of government and the tax burden on those chosen to pay that cost, and

surely some exercise of legislative thought or discretion is requisite for valid action.

We do not have in the Philippine coconut oil provisions of the Revenue Act of 1934 an "appropriation" in the true sense of that word. Presumably all revenues collected for the support of the Government of the United States go into the United States Treasury as the United States Treasury and not merely as a temporary custodian for some other government or beneficiary. As, however, the Government's attorneys claim the measure to be a revenue measure and the provision for transmission to the Philippine treasury to be an appropriation from the United States Treasury, the question arises whether, even if that claim were assumed for a moment to be correct, the imposition and appropriation satisfy the constitutional requirements.

Clause 7 of Section 9 of Article I seems to have occasioned no litigations or court decisions and the contention made in this part of this brief may have some novelty. This novelty, however, may be the novelty of the provisions which we are considering; for we believe that no precedent will be found in the whole legislative history of the United States for the imposing of a heavy, and in the case of the petitioner a ruinous tax, producing from fifteen to seventeen million dollars or more a year, upon one group of the American population, numerically a small proportion of that population, and doing nothing with or about those onerous millions except to conduct them bodily into the treasury of another government.

There was, on the part of Congress, not the slightest investigation into the relationship between the amount of the taxes and the needs of the Philippine Commonwealth. Not the slightest itemizing of the uses of the money was made or thought about. No control is reserved over the uses of the money. The amount bears not the slightest

relationship to the needs, if any, for which it was raised or transmitted, nor was there the slightest thought given to any such relationship.

We contend that the provisions of Section 602½ involved in this case do not constitute a revenue and appropriation measure; but if they were to be treated as such, they represent an arbitrary action of Congress and one lacking in the slightest exercise of that minimum of thought and discretion which the Constitution requires of Congress as a taxing and appropriating body. Surely some calculation of relationship between need and expenditure is fundamental to the validity of taxation and appropriation.

If the requirement of Clause 7, Section 9, Article I of the Constitution could be satisfied by simply requiring that all of the proceeds of the particular tax, no matter what the amount, shall be paid over to the Philippine Treasury, then the same method could be applied to any and every other tax; that is, select a group which is to pay a special tax, though that group be in no respect a beneficiary of or related to the beneficiary of the proceeds, fix the measure of the burden without any relationship to the needs for which the proceeds are to be applied and then send all the proceeds, whatever the amount, to a specified official, bureau, department or other recipient. No details of appropriation would be required, no study whatever given to the needs of the particular recipient or purpose, but simply the farming out of the yield of each tax to a single designated recipient and selecting a special group of the population to bear the burden of each tax without any calculation of the relationship between the amount levied and the amount needed by the recipient. This would fail to measure up to the minimum requirements of the simplest budget system. It would be a contradiction of budgeting. Clause 7 of Section 9 of Article I surely does

not authorize such a contradiction of budgeting. That clause surely has more significance than that, especially when taken in connection with the Fifth Amendment. Some exercise of legislative discretion as to the amount needed by the particular beneficiary or purpose is surely requisite. If they could be treated as a revenue and appropriation measure, the Philippine coconut oil provisions of the Revenue Act of 1934 would fail to reach the very minimum requirements of the exercise of congressional discretion.

Concluding Summary

As the federal government is a government of limited powers, it has no non-granted power of taxation nor any other non-granted power. If, therefore, the Philippine coconut oil processing tax does not fall within the scope of the granted taxing or other power, it is, for that reason, invalid.

We have shown, we submit:

(a) It does not fall within the powers granted by Section 8 of Article I of the Constitution for it is not levied for the support of the government of the United States or the financing of any activities of the government of the United States, every penny from it being placed in the treasury of another government whose expenditure thereof is not controlled by the United States.

(b) It does not fall within Clause 1 of Section 8 of Article I, for it is not imposed for the general welfare, being simply a collection from a designated group of American manufacturers exclusively for the treasury of the Philippine Commonwealth.

(c) It is not an import duty for it is not levied upon imports or importers nor upon all imported Philippine coconut oil.

(d) It is not an exercise of the power to regulate foreign or interstate commerce, for it does not seek to nor does it regulate commerce between the Philippine Islands and points in the United States; all commerce in the oil terminates before the beginning of the processing on which the tax is imposed; and, in so far as it is regulatory, the subject matter of its regulation is intra-state manufacture and intra-state agriculture.

(e) It is not an exercise of the power to finance the exercise by the United States of any of the duties, functions or activities of the United States in or relating to the Philippine Islands, for not one penny from the tax is authorized, allowed, directed or required to be used for any such purpose.

(f) It is not an exercise of any power which the United States may still possess to regulate the Philippine Islands, for the tax is imposed exclusively on processing and processors within the United States.

In short, it is not an exercise of any power which the Constitution has granted to Congress.

It is, therefore, respectively submitted that this case is one calling for the exercise by this Court of its supervisory powers, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States District Court in and for the Southern District of Ohio and finally reverse the same.

Alfred Bettman,

Counsel for Petitioner.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680, 763:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal [23] oil, or sunflower oil, or any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture, (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials pur-

[23] So in original.

chased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such maner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon

the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by Section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in sub-section (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States (U. S. C., Title 26, Sec. 999).

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Convention to Frame Constitution for Philippine Islands.

Section 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft *a constitution for the government* of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, *which shall exercise jurisdiction over* all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS.

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in Section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and

instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of Section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the

Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the

necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

Submission of Constitution to the President of the United States.

Sec. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

SUBMISSION OF CONSTITUTION TO FILIPINO PEOPLE.

Sec. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine Independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution. The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall thereupon issue a proclamation announcing the results of the election, and upon the issuance of such

proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH.

Sec. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE.

Sec. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on

unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined

sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respectively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected and paid on like articles imported from foreign countries;

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the islands of Guam.

Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint by and with the advice and consent of the Senate a United States High Commissioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to the Philippine Islands. He shall be the representative of the President of the United States in the Philippine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands, by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may be taken to the President of the United States. The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident

Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

Sec. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of Hawaii who does not apply for and secure an immigration

or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and, under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws not inapplicable, shall

apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

Sec. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY.

Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philip-

pines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

NEUTRALIZATION OF PHILIPPINE ISLANDS.

Sec. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

NOTIFICATION TO FOREIGN GOVERNMENTS.

Sec. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

TARIFF DUTIES AFTER INDEPENDENCE.

Sec. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: Provided, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent government of the Philippine Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

IMMIGRATION AFTER INDEPENDENCE.

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

CERTAIN STATUTES CONTINUED IN FORCE.

Sec. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Phillipine Islands shall be deemed successor to the present government of the Philippine Islands and of all the rights and obligations thereof. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

Sec. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE.

Sec. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

ORDINANCE APPENDED TO THE CONSTITUTION OF THE PHILIPPINE COMMONWEALTH.

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every office of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and

subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippine recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth

of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Act of Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approved the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of the Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

Sec. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Phil-

ippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One Hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications, compensation, and expenses of the Resident Commissioner shall be fixed by law.

Sec. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.